

RECORDATION NO. **6428-F** Filed 1428

LAW OFFICES

1401 MANATEE AVENUE WEST  
P. O. Box 241  
BRADENTON, FLORIDA 33506  
(813) 747-5550

**AUG 5 1987 - 10 50 AM**  
**HOLLAND & KNIGHT**  
**INTERSTATE COMMERCE COMMISSION**

ONE EAST BROWARD BLVD.  
P. O. Box 14070  
FORT LAUDERDALE, FLORIDA 33302  
(305) 525-1000

92 LAKE WIRE DRIVE  
P. O. DRAWER B W  
LAKELAND, FLORIDA 33802  
(813) 682-1161

1200 BRICKELL AVENUE  
P. O. Box 015441  
MIAMI, FLORIDA 33101  
(305) 374-8500

255 SOUTH ORANGE AVENUE  
P. O. Box 1526  
ORLANDO, FLORIDA 32802  
(305) 425-8500

BARNETT BANK BLDG.  
P. O. DRAWER 810  
TALLAHASSEE, FLORIDA 32302  
(904) 224-7000

600 NORTH FLORIDA AVE.  
P. O. Box 1288  
TAMPA, FLORIDA 33601  
(813) 223-1621

CABLE ADDRESS  
HND KNIGHT TPA  
H&K MIA  
TELEX 5-2630-TAMPA  
TELEX 52-2233-MIAM1

PLEASE REPLY TO:

Washington

August 5, 1987

888 SEVENTEENTH STREET, N.W.  
SUITE 400  
WASHINGTON, D. C. 20006  
(202) 955-5550

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
12th Street & Constitution Avenue, N.W.  
Room 2215  
Washington, D.C. 20423

No. **7-217A011**

**AUG 5 1987**

Date .....

Fee \$ **10.00**

ICC Washington, D. C.

Re: Recordation of Lease of Rail Cars

Dear Ms. McGee:

I have enclosed an original and one certified copy of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a lease of forty rail cars from Firstmark Corporation to Aluminum Company of America and is dated July 21, 1987. The primary document to which this document is connected is recorded under Recordation No. 6428 (Delaware Freight Car Corp., now Firstmark Corporation, owner/lessor). The names and addresses of the parties to the document are as follows:

Lessor	-	Firstmark Corporation 135 Delaware Avenue Buffalo, NY 14202
Lessee	-	Aluminum Company of America 1501 Alcoa Building Pittsburgh, PA 15219

A description of the equipment covered by the lease follows:

40 100 ton roller bearing, 3610 cubic foot capacity, gondola railcars, equipped with fixed couplers, with car markings YDC200-299.

*Claretey-McGee - (and Baller)*

**AUG 5 10 45 AM '87**  
RECORDED  
INDEXED

Ms. Noreta R. McGee  
August 5, 1987  
Page 2

A fee of \$10 is enclosed for this filing. Please return the original and any other copies not needed by the Commission for recordation to the undersigned.

A short summary of the document to appear in the index follows:

Lease between Firstmark Corporation (formerly Delaware Freight Car Corp.), 135 Delaware Avenue, Buffalo, NY 14202, and Aluminum Company of America, 1501 Alcoa Building, Pittsburgh, PA 15219, dated July 21, 1987 and covering 40 100 ton roller bearings, 3610 cubic foot capacity, gondola railcars, equipped with fixed couplers, with car markings YDC 200-299.

Very truly yours,

HOLLAND & KNIGHT



David H. Baker  
Attorney for Lessee  
Aluminum Company of America

DHB:nct  
Enclosures

Interstate Commerce Commission  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

David H. Baker Mfg.  
888 Seventeenth St. N.W.  
Ltc. 400  
Washington, D.C. 20006

August 5, 1987

Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on Aug. 5, 1987 at 11:51 AM, and assigned recordation number(s). 6428-F

Sincerely yours,

Noreta R. McGee  
Secretary

Enclosure(s)

# ORIGINAL

6428-F  
AUG 5 1987 - 10 50 AM RAILCAR LEASE AGREEMENT

**INTERSTATE COMMERCE COMMISSION**  
 AGREEMENT, made and entered into as of this 1st day of July, 1987, by and between Firstmark Corporation, a Delaware corporation, hereinafter called "Lessor", and Aluminum Company of America, a Pennsylvania corporation, hereinafter called "Lessee".

## Equipment, Lease Charges and Term of Agreement.

Lessor agrees to furnish to the Lessee, and the Lessee agrees to accept and use, upon the terms and conditions herein set forth, the following described railcars (hereafter "Cars"), for the use of each of which the Lessee agrees to pay Lessor the following lease charges (hereafter "Lease Charges"):

<u>Number of Cars</u>	<u>Description</u>	<u>Lease Charges</u>
40	100 ton roller bearing, 3610, cubic foot capacity gondola railcars equipped with fixed couplers, more specifically described on Exhibit A attached hereto and made a part hereof.	Monthly lease rate per car is \$172.50.

This Agreement shall be for a term of sixty (60) months, commencing on August 1, 1987 and terminating on July 31, 1992. Payment of Lease Charges shall be made to Lessor at the address specified in Article 15, or to such other place as Lessor may direct, on the first day of each month in advance during said term, with the first month's payment due and payable on August 1, 1987, and the remaining monthly payments due and payable on the first day of each of the next fifty-nine (59) consecutive months thereafter; provided, however and except as otherwise provided herein, that all Lease Charges with respect to each of the Cars shall continue in effect until such Cars shall have been returned to Lessor at the expiration of said term as hereafter provided in Article 5. Notwithstanding the foregoing, Lessor acknowledges the receipt of \$15,350.00 from Lessee and agrees that such sum shall be applied to the payment of Lease Charges beginning August 1, 1987 until such sum is exhausted and without further liability of Lessee for payment of Lease Charges until such sum is so applied. If Lessee shall fail to pay when due any Lease Charges or portion thereof or any other sum due hereunder, Lessee shall pay to Lessor interest on such Lease Charges or other sum from the due date thereof until paid at the rate of fifteen percent (15%) per annum. Any costs and expenses incurred by Lessor in collecting Lease Charges wrongfully withheld by Lessee or incurred by Lessor in enforcing or attempting to enforce any of Lessee's duties, liabilities or obligations hereunder, including reasonable attorney's fees, will be paid by Lessee on demand by Lessor.

Lessee shall not be entitled to any abatement of Lease

Charges or any other amount payable hereunder, reduction thereof or set-off, counterclaim, recoupment or defense whatsoever, including, but not limited to, abatements, reductions, set-offs, counterclaims, recoupments or defenses due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor or any other person for any reason whatsoever, except as otherwise provided in this Article 1 and Article 4 below; nor shall this Agreement be terminated by Lessee as to any Car or the obligations of Lessee be otherwise affected by reason of any defect in the condition, design, operation or fitness for use of any Car or damage to or loss of possession or loss of use or destruction of all or any of such Cars from whatever cause and of whatever duration, except as otherwise provided in this Article 1 and Article 4 below, or the prohibition of or other restriction against Lessee's use of all or any such Cars, or the interference with such use by any person or entity or any insolvency of or the bankruptcy, reorganization or similar proceeding against Lessee.

Lessor covenants and warrants that it is the Owner of the Cars and that such Cars are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person and that so long as Lessee is not in default hereunder, Lessee shall have and enjoy an unconditional right quietly to enjoy and use all Cars free from any disturbance or interruption of possession arising as a result of any action or inaction, failure of title, or conduct of or by Lessor, or any insolvency of or the bankruptcy, reorganization or similar proceeding against Lessor, or of or by any assignee of its rights hereunder. Notwithstanding anything to the contrary contained in this Agreement or by operation of applicable law, breach of the foregoing covenant and warranty by Lessor or by any such assignee shall entitle Lessee to abate the Lease Charges for any Cars subject to such breach, but, as to Lessor and any such assignee, such abatement of Lease Charges shall be Lessee's sole remedy for such breach and in no event shall Lessor or any such assignee be liable for consequential or incidental damages.

2. Delivery and Location of Cars. Lessor will cause the Cars, at Lessor's sole risk, cost and expense, to be delivered to Lessee at their present location on sidings at or near Yankeetown, Indiana, suitable for interchange and in conformity with all applicable laws, regulations, rules and orders including the AAR Code of Rules and FRA Railroad Freight Car Safety Standards. Within ten days of such Car's delivery to Lessee, Lessee shall execute a Certificate of Acceptance (Exhibit B) evidencing Lessee's acceptance of the Car(s). Lessee covenants and agrees that the Cars will be used solely on its own lines and upon the lines of railroads in the continental United States and the Dominion of Canada in the usual interchange of traffic; provided, however, that any use in Canada shall be incidental and temporary. At the time of the expiration or earlier termination of this Agreement and redelivery of the Cars, representatives of the Lessor and the Lessee will perform and execute joint inspection reports covering the condition of the Cars.

3. Warranties and Representations. LESSEE AGREES THAT THE CARS LEASED HEREUNDER ARE LEASED "AS IS" AND "WHERE IS", AND

THAT LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND RESPECTING THE CARS WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE CARS PURSUANT TO THIS AGREEMENT TO HAVE MADE, ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE WORKMANSHIP IN, THE CARS, ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND LESSOR SHALL NOT BE LIABLE, IN CONTRACT, TORT OR OTHERWISE, ON ACCOUNT OF ANY DEFECT, WHETHER HIDDEN, LATENT OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE RESPECTING ANY CARS.

4. Responsibility for Damage or Destruction of Cars. In the event of repairable damage to any of the Cars, Lessee agrees to assume responsibility for such damage and to cause the Cars to be repaired pursuant to the requirements and standards of Article 6 below while continuing to pay Lease Charges thereon. If any of the Cars are lost, destroyed, or damaged beyond economic repair, Lessee agrees to pay Lessor the settlement value of the Car computed under Rule 107 of the Interchange Rules adopted by the Association of American Railroads (hereafter "AAR Code of Rules") within the earlier of (a) 120 days after such occurrence, or (b) 60 days after Lease Charges with respect to any Car subject to such occurrence shall have abated pursuant to the provisions of the immediately succeeding sentence. Lease Charges with respect to any Car shall abate upon the date Lessor is advised that such Car has been lost, destroyed, or damaged beyond economic repair.

Upon payment by Lessee to Lessor of the settlement value of any Car as hereinabove provided, so long as Lessee is not in default of its payment obligations hereunder, such Car shall become the property of the Lessee. In order to facilitate the sale or other disposition of any Car which becomes Lessee's property as hereinbefore provided, Lessor shall, upon request of Lessee, execute and deliver to Lessee or to Lessee's vendee, assignee or nominee, a bill of sale for such Car, without representations or warranties of any nature whatsoever, except for a warranty that title is free and clear of all liens, security interests, and other encumbrances by or in favor of any person through the date of this Agreement and claiming by, through or under Lessor thereafter, and such other documents as may be required to release such Car from the terms and scope of this Agreement and from any other lien or encumbrance of Lessor's making, undertaking or sufferance, in such forms as may be reasonably required by the Lessee.

5. Return of Cars. Except as provided for in Article 4 and Article 17 the Lessee agrees, immediately upon the expiration or earlier termination of this Agreement, without demand by Lessor, to return, at Lessee's sole risk, cost and expense, each of the Cars to Lessor uncontaminated and in good operating order, condition and repair, less reasonable wear and tear, and otherwise conforming in all respects with the requirements and standards imposed upon Lessee with respect to such Cars under this Agreement, including, but not limited to, the requirements and standards contained in Article 6 below, and free of liens arising by,

through or under Lessee, to such storage tracks of Lessee as Lessor may designate, or in the absence of such designation by Lessor, as Lessee may select, and to transport the same, at Lessee's sole risk, cost and expense, to any reasonable place on the lines of railroad operated by Lessee or to any connecting carrier at the point of connection with Lessee for shipment, all as directed by Lessor upon not less than thirty (30) days notice to Lessee.

In the event of the earlier termination of this Agreement by Lessor pursuant to Article 14 below, Lessee further agrees to permit Lessor to store at Lessee's sole risk all or less than all of the Cars in such reasonable storage place on Lessee's lines of railroad as Lessee may designate, or in the absence of such designation by Lessee, as Lessor may select, for a period not exceeding one hundred eighty (180) days, at the Lessee's sole cost and expense, and to transport such Cars, at any time within such one hundred eighty (180) day period, at Lessee's sole cost and expense, to any reasonable place on the lines of railroad operated by Lessee or to any connecting carrier at the point of connection with Lessee for shipment, all as directed by Lessor upon not less than thirty (30) days notice to Lessee.

6. Maintenance. Except as provided in Article 4, Lessee agrees to maintain, at its own cost and expense, each of the Cars in good operating order, condition and repair, suitable for interchange and in conformity with all applicable laws, regulations, rules and orders, including the AAR Code of Rules and FRA Railroad Freight Car Safety Standards. In the event that Lessee fails to maintain any or all of the Cars in accordance with this Article 6 and Lessee is declared to be in default by Lessor, Lessee shall have the option to cure such default by either,

- a) repairing the cars pursuant to the requirements and standards of Article 6 within a period of thirty days after such declaration of default by Lessor, or,
- b) remitting to Lessor the Net Present Value of the remaining lease payments using a 10% discount factor.

Lessee shall not make any modifications, alterations or additions to the Cars unless mandated by the AAR Code of Rules or the U.S. Department of Transportation, without the prior written consent of Lessor, and then, all such modifications, alterations and additions shall belong to Lessor.

7. Freight and Other Charges. Lessor shall not be obligated for the payment of any switching, freight, or other charges incurred by the movement or the holding of the Cars, either loaded or empty, during the term of this Agreement, all of which will be paid by Lessee. Lessor shall have no right or claim to any per diem, demurrage or other Car hire charges arising out of the use of the Cars and all such charges, as applicable, shall belong and be payable to Lessee.

8. Lettering of Cars. Lessor has supplied Cars bearing reporting marks in Exhibit A. Lessee shall change said reporting

marks indicated in Exhibit A by deleting the prefix "YDC" and substituting the prefix "SQCX". Lessee agrees to keep and maintain on the sides of each Car in letters not less than one-half inch in height the words "OWNERSHIP SUBJECT TO LEASE AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION".

9. Responsibility for Taxes. Lessee agrees to assume responsibility for, and to pay, all taxes, costs, fines and assessments of every kind upon the Cars and/or the Lease Charges payable hereunder, and to file all reports relating thereto; provided, however, that Lessee shall not be responsible for federal or state taxes based upon the income of Lessor.

10. Responsibility for Lading. Lessor shall not be liable for any loss of, or damage to, commodities, or any part thereof, loaded or shipped in the Cars, however such loss or damage shall be caused, or shall result. The Lessee agrees to assume responsibility for, and to indemnify Lessor against, and to save it harmless from, any such loss or damage or claim therefor.

11. Idemnification. Lessee agrees to indemnify and save Lessor harmless from any and all claims, demands, causes of action, reasonable costs and expenses, including reasonable attorney fees, arising directly or indirectly out of the use, custody, control, maintenance, repair or operation of the Cars or otherwise arising out of Lessee's failure to perform any of Lessee's obligations hereunder, whether in contract, tort, or otherwise. In any personal injury action(s) arising from the use, custody, control, maintenance, repair or operation of said Cars naming Lessor as a defendant, Lessee agrees if Lessor so requests, to undertake the defense and costs associated therewith immediately upon tender of said defense, including payment of any judgement directed against Lessor jointly or severally. Lessee also agrees to pay and indemnify Lessor from any and all penalties, fines and levies arising from Lessee's use, custody, control, maintenance, repair or operation of said Cars under this Agreement. Lessee's obligations hereunder shall survive the termination of this Agreement, but shall not extend to claims, demands, or causes of action as may arise from the gross negligence of Lessor.

12. Force Majeure. Neither party to this Agreement shall be liable for nonperformance or delay in performance hereunder to the extent caused by unforeseen acts of God, government restraint, acts of the public enemy, civil commotion, strikes, nuclear or other disasters, labor disputes, labor or material shortage, fire, explosion, flood or breakdown of or damage to plant, equipment or facilities (any of such events herein called "Force Majeure"). If affected by Force Majeure, the party so affected will give notice to the other party as promptly as practicable of the nature and expected duration of such Force Majeure. If, because of Force Majeure, either party hereto is prevented from carrying out any of its obligations under this Agreement, then the obligations of such party shall be suspended to the extent made necessary by such Force Majeure. The party affected shall exercise all reasonable efforts to eliminate the effect of such Force Majeure as promptly as possible.



13. Assignment. (a) Lessee shall be entitled to the possession and use of the Cars in accordance with the terms of this Agreement. Except as herein provided, Lessee will not assign, transfer, encumber or otherwise dispose of this Agreement, the Cars or any part thereof, or sublet any Car except to an affiliated entity, including Squaw Creek Coal Company, without the prior written consent of Lessor; provided, however, that Lessee shall have the right to mortgage or assign Lessee's interest under this Agreement to a lender as security for financing. Lessee will not permit or suffer any encumbrances or liens to be entered or levied upon any Car, other than such as may arise by, through, or under Lessor or any assignee of Lessor's rights hereunder.

(b) Lessee acknowledges and understands that Lessor may, without notice to Lessee, assign its interest under this Agreement and in and to the Cars. Lessee agrees in the event of any such assignment and upon notice thereof from Lessor, (i) to recognize such assignment; (ii) to make all payments of Lease Charges and other amounts due under this Agreement as so assigned directly to the assignee identified in such notice or to its designee; (iii) to accept the directions or demands of such assignee in place of those of the Lessor; (iv) to surrender the Cars to such assignee upon the expiration or earlier termination of this Agreement; (v) that, in the event of such assignment and except as otherwise provided in Articles 1 and 4 hereof, Lessee's obligations hereunder with respect to payment of Lease Charges and other sums shall not be subject to any reduction, abatement, defense, set-off, counterclaim or recoupment for any reason whatsoever; (vi) except as otherwise provided in Article 4 (with respect to any Car which becomes Lessee's property), not to terminate this Agreement; and (vii) not to require any such assignee to perform any duty, covenant or condition required to be performed by Lessor under this Agreement; provided, however, nothing contained in this Article 13 shall relieve Lessor from its obligations to Lessee hereunder, nor shall any assignee hereof be relieved of the obligation to release its interest in any Car to facilitate Lessor's obligations contained herein.

14. Remedies. If the Lessee after ten business days notice shall fail to pay or perform when due any of the obligations on its part to be paid or performed under this Agreement, or, in the case of any such failure of performance (but not of payment) which shall be of such a nature that it cannot with reasonable diligence be cured completely by Lessee within said ten business day period, if Lessee shall fail to immediately commence to cure any such failure within said ten business day period or shall fail thereafter to proceed continually and in good faith to cure any such failure, or if a petition, in bankruptcy, for reorganization, for a Trustee, or for a Receiver, shall be filed by the Lessee, or filed against the Lessee and not dismissed within 60 days, then, and in any of said events, Lessor shall have all rights available to it at law or in equity, including without limitation the right immediately to repossess the Cars, to remove the Cars from the Lessee's service, to terminate this Agreement, and recover any and all damages sustained as a result

of Lessee's breach. If Lessor shall terminate this Agreement pursuant to this Article 14, Lessee shall remain liable for all unpaid Lease Charges and other amounts due hereunder, which unpaid Lease Charges and other amounts shall, at Lessor's option, become immediately due and payable. The rights and remedies herein given to Lessor shall in no way limit its other rights and remedies given or provided by law or in equity.

15. Notice. All notices, requests, demands, directions and other communications which may or are required to be given, served or sent by either Lessor or Lessee to the other under this Agreement shall be in writing (including telegraphic communication) and shall be deemed to have been properly given or sent if mailed by registered or certified mail with postage prepaid, return receipt requested, or if telegraphed with report of delivery, addressed to the applicable party at the address stated below, or, as to each party, at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this paragraph 15.

(a) If to Lessee:

Bauxite & Northern Railroad  
425 Sixth Avenue  
Room 854  
Pittsburgh, PA 15219

Attention: Mr. James W. Lyle, President

(b) If to Lessor:

Firstmark Corporation  
135 Delaware Avenue  
Buffalo, New York 14202

Attention: Mr. John M. Murray  
Executive Vice President

All such notices, requests, demands, directions and other communications shall, when mailed or telegraphed in the aforesaid manner, be effective when so mailed or telegraphed.

16. Compliance with Laws. Lessee agrees to comply with all governmental laws, regulations, rules, orders and requirements, including, but not limited to, the AAR Code of Rules and FRA Railroad Freight Car Safety Standards, from time to time in effect with respect to the use, custody, control, maintenance, repair and operation of the Cars.

17. Purchase Option. Provided that there is no uncured default of Lessee hereunder, Lessee shall have the option to purchase all or any of the Cars covered by this Agreement at the expiration of the term of this Agreement for \$1.00 each, such option to be exercised by Lessee, if at all, by notice thereof from Lessee to Lessor not later than ninety (90) days before the expiration of said term. Upon the making of such payment by

Lessee to Lessor, the Lessor shall execute and deliver to Lessee a Bill of Sale (without representations or warranties of any kind except that such Cars are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person through the date of this Lease and claiming by, through or under Lessor thereafter) for such Cars, transferring to Lessee all of Lessor's right, title and interest in and to such Cars.

18. Governing Law. Lessor and Lessee hereby agree that this Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

19. Insurance. Lessee shall keep the Cars insured against all risks of loss, theft, or damage from every cause whatsoever for their full insurable value, with Lessor as loss payee, and if required by Lessor, Lessee shall carry public liability insurance insuring both Lessor and Lessee against damages and claims for personal injury, death and property damage except for claims or damages arising out of Lessor's gross negligence. All such insurance shall be in form, amount and with companies reasonably satisfactory to Lessor and consistent with railroad industry standards. Each Policy of Insurance shall provide for 30 days prior written notice of cancellation or modification to Lessor. Lessee shall pay all premiums for such insurance and shall deliver to Lessor certificates of insurance as evidence of coverage. Lessee agrees if Lessee shall fail to procure, maintain and pay for such insurance after thirty (30) business days notice of such failure from Lessor, Lessor shall have the right, but not the obligation, to obtain such insurance on behalf of and at the expense of Lessee. In the event Lessor does obtain such insurance, Lessee agrees to pay all costs thereof, with the next payment of Lease Charges. Notwithstanding any of the above, Lessee shall have the right to self insure the insurance obligations contained in this article.

20. Filing and Administration. Lessee will promptly cause this Agreement to be duly filed, registered or recorded with the Interstate Commerce Commission of the United States for the protection of Lessor's title and will furnish Lessor proof thereof. Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister, or rerecord whenever required) any and all further instruments required by law or reasonably requested by Lessor, for the purpose of protecting Lessor's title to the Cars to the satisfaction of Lessor's counsel or for the purpose of carrying out the intention of this Agreement, and in connection with any such action, will deliver to Lessor proof of such filing.

21. Recordkeeping; Inspection. Lessee agrees to keep and maintain and make available to Lessor such record of Lessee's use, operation, inspection, repairs and maintenance of each Car while in its possession as shall be reasonably required by Lessor. Lessor, by such agent or agents as it may designate, shall have the right at all reasonable times to go upon the property of Lessee to inspect any Car while in the possession of

Lessee.

22. Execution. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract. This Agreement may be signed in separate counterparts so long as each party hereto shall have signed at least one counterpart.

23. Binding Effect. Except as herein provided, this Agreement shall be binding upon and shall inure to the benefit of Lessor, its legal representatives, successors and assigns, and Lessee, its legal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed and delivered as of the day and year first above written.

LESSOR:

FIRSTMARK CORPORATION

By: John M. Murray  
Title: Exec VP - Finance  
Date: July 21, 1987

LESSEE:

ALUMINUM COMPANY OF AMERICA

By: J. Robert Loon  
Title: Director-Transportation  
Date: 1987 July 17

STATE OF NEW YORK )  
COUNTY OF ERIE ) SS:

On this 21<sup>st</sup> day of JULY, 1987, before me came JOHN M. MURRAY to me known, who, being by me duly sworn, did depose and say that he resides at 82 DEER RUN WILLIAMSVILLE, NY, that he is the EXEC. VICE PRESIDENT of Firstmark Corporation the corporation described in, and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Raymond H. Tworek

RAYMOND H. TWOREK  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires February 28, 1990

STATE OF PENNSYLVANIA )  
COUNTY OF ALLEGHENY ) SS:

On this 17<sup>TH</sup> day of July, 1987, before me came A. ROBERT HOON to me known, who, being by me duly sworn, did depose and say that he resides at CARNEGIE, PA, that, he is the DIRECTOR TRANSPORTATION of Aluminum Company of America, the corporation described in, and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Bernard C. Reed

BERNARD C. REED, Notary Public  
PITTSBURGH, ALLEGHENY COUNTY, PA  
MY COMMISSION EXPIRES  
AUGUST 18, 1990

EXHIBIT A

EQUIPMENT DESCRIPTION

<u>Description</u>	<u>Number of Cars</u>	<u>Car Markings</u>
100 ton roller bearing 3610 cubic foot capacity gondola railcars equipped with fixed couplers	40	YDC 200-299*

\*Specific car numbers will be added at a later date.

EXHIBIT B

CERTIFICATE OF ACCEPTANCE

The undersigned, a duly authorized representative of Aluminum Company of America (the "Lessee"), does hereby certify that he has caused to be inspected and, on the date set out below, has accepted on behalf of the Lessee the following described units of equipment, which units are suitable for interchange and in conformity with all applicable laws, regulations, rules and orders including the AAR Code of Rules and FRA Railroad Freight Car Safety Standards.

<u>Number of Cars</u>	<u>Description</u>	<u>Road Numbers</u>	<u>Date Accepted</u>
	100 ton roller bearing 3610 cubic foot capacity gondola railcars equipped with fixed couplers		

\_\_\_\_\_  
Authorized Representative